

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 176 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BALOCH ANWAR SULEMAN

Versus

SUB-DIVISIONAL MAGISTRATE BHAVNAGAR

Appearance:

MR PM DAVE for Petitioner

Mr.L.R.Poojari, A.P.P. for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/04/97

ORAL JUDGEMENT

The petitioner, an externee under the impugned order (Annexure : B) dated 6.3.1996 passed by respondent No.1, has preferred this petition challenging the said order as well as the Appellate order dated 26.12.1996 (Annexure : C) passed by respondent No.2, on number of grounds, inter-alia on the ground that the impugned order would stand vitiated on account of non-application of

mind.

2. It has been submitted on behalf of the petitioner that the show cause notice dated 16.9.1995 in the first instance specifies allegations to the effect that the petitioner has been dangerous, quarrel-some and head strong and has been committing acts of violence by himself and with the aid of his associates. He has been using deadly weapons in committing such acts in the area under Bhavnagar City "C" Division Police Station. It has further been asserted that such acts have been committed by the petitioner since April 1994 and the particulars thereof are set out in the table. The table, however, on the face of the notice indicates seven offences of 1994 stated to have been committed under Sections 66-B, 65-E of the Bombay Prohibition Act and all the cases are shown to be pending trial. There is no other offence, much less under any of the provision of the Indian Penal Code set out in the table or any part of the show cause notice.

3. The impugned order of externment has also been read before this Court and the same indicates no other materials except the particulars set out in the aforesaid table referred to in the show cause notice. The appellate Authority has also not chosen to deal with the merits of the matter and has rejected the Appeal only on the ground of limitation. In my opinion, on a bare look at the grounds of externment as appearing in the show cause notice as also the impugned order of externment it clearly appears that the same displays apparent non-application of mind on the part of the concerned Authority. For the purpose of coming to the conclusion that the petitioner has been dangerous person so as to keep him away from the area set out in the show cause notice the Externment Authority has relied upon offences under the Bombay Prohibition Act which are still pending trial. The orders impugned in this petition, therefore, would deserve to be set aside only on this limited ground. They also deserve to be set aside for the reasons that the authority could have proceeded to take appropriate action under Section 57 of the Bombay Police Act, 1951 (Act No.22 of 1951) instead of action which has been taken under Section 56 of the said Act. Reference in this connection might be made to Aswin Chandulal Jaiswal V/s. Dy.Commissioner of Police, Vadodara, reported in XXX(2) - 1989 (2) G.L.R. 1429. Para : 10 whereof would indicate the proper pointer. The same might be reproduced for that purpose:

"10. If at all the allegations against the petitioners are that he is indulging in

bootlegging activities, action can be contemplated only under Sec.57 of the Bombay Police Act. If the Police could not secure conviction of the petitioner under the Bombay Prohibition Act to enable to take externment proceedings under Sec.57 of the Bombay Police Act, alternative cannot be sought by taking action under Sec.56 of the Bombay Police Act. As discussed above, it appears that the activities of the petitioner as a bootlegger are required to be stopped. Considering the notice, it transpires that the anti-social activity of bootlegging is required to be controlled and the petitioner is sought to be removed from the harm's way for that purpose so that social culture and the social order may not be affected and other persons also may not follow the petitioner in indulging in such business. We have observed that even no material allegation of general nature based on any particular instance and stating the time and place at which such incident had occurred, is stated either in the notice or in the order. For all these reasons, we allow the Special Criminal Application and set aside the externment order. Rule is made absolute."

4. In above view of the matter no other ground is required to be heard. This Special Criminal Application is accordingly allowed and the impugned orders of externment of the petitioner and the rejection of the petitioner's Appeal respectively are accordingly set aside. Rule made absolute accordingly.

* * * * *